CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554
E-Mail: probono@delphi.com

Box 69, Gedney Station
White Plains, New York 10605

BY FAX: 518-455-5752

October 11, 1995

Assembly Judiciary Committee
L.O.B. Room 831
Empire State Plaza
Albany, New York 12248

ATT: Jennifer Galarneau, Executive Assistant

Dear Ms. Galarneau:

Per your request, transmitted herewith is our tentative agenda for the October 24th meeting, scheduled with counsel to the Assembly Judiciary Committee.

Because of the seriousness of our recommendations--fully supported as they are by incontrovertible documentary proof--much of which is already in the Committee's possession--we believe that the relevant government agencies and legislative committees should be invited to participate.

As discussed, our final agenda will be sent to you tomorrow, together with an inventory of the supporting evidentiary documentation.

Thank you again for your time and attention to this matter.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosure: Agenda
(9 pages)

TENATIVE MEETING AGENDA: Tuesday, October 24, 1995, 3:00 p.m.
Assembly Judiciary Committee
831 Legislative Office Building

Attendees: Counsel to the Assembly Judiciary Committee
Pat Gorman, Esq.
Joanne Barker, Esq.
Center for Judicial Accountability, Inc.
Doris L. Sassower, Director
Elena Ruth Sassower, Coordinator

Invitees: New York State Attorney General
New York State Board of Election
New York State Commission on Judicial Conduct
New York State Ethics Commission
New York State Committee on Open Government
New York State Senate Judiciary Committee
New York State Election Law Committee

I. CJA RECOMMENDATIONS FOR IMPERATIVELY-REQUIRED LEGISLATIVE ACTION:

A. Amend CPLR Article 78 statute.

** venue of 78 proceedings against Appellate Division judges (CPLR §506, §7804);

** right of appellate review in Article 78 proceedings against Appellate Division judges

[See, Sassower v. Mangano, Ct of Appeals, Doc. 3, pp. 8-12; Doc. 4, pp. 3-10; Doc. 6, p. 5; S.Ct, Cert Petition, pp. 19-21]

B. Amend Attorney Disciplinary Law: Judiciary Law §90 and rules of the Appellate Divisions.

Judiciary Law §90 is unconstitutional: See, dissenting opinion of Judge Jack Weinstein, Mildner v. Gulotta, 405 F.Supp. 182 (1975).

Judiciary Law §90 does not authorize "interim" suspensions: See, Matter of Nuey, 61 NY2d 513 (1984); court rules providing for same are unconstitutional, inter alia, in failing to provide for prompt post-suspension hearings, See, Matter of Russakoff, 79 NY2d 520 (1992).

** Appellate rights. At present, disciplined attorneys have no absolute right to appellate review and no review by way of Article 78.

** Discovery. At present, attorneys are denied all discovery.

** Oversight. At present, the attorney disciplinary mechanism is, demonstrably, politicized and corrupted. Attorney disciplinary proceedings are commenced without probable cause findings and without compliance with the Judiciary Law and the court's own rules; politically-connected lawyers are protected from disciplinary investigation and prosecution.

[See, Sassower v. Mangano, Ct of Appeals: Doc. 4, pp. 16-23; S.Ct., Cert Petition, pp. 13-29; Correspondence with NYS Bar Association: 6/1/95; 5/16/95]

C. Legislative Oversight: Investigation and Hearings of official misconduct (protectionism) by NYS Attorney General, NYS Board of Elections, NYS Ethics Commission, NYS Commission on Judicial Conduct.

1. Amend the statutory duties of the NYS Attorney General.

** Create a unit within the AG's office to independently assess public interest in litigation. At present, the AG knowingly and deliberately abdicates its responsibility to the public, which it wholly subordinates to a knee-jerk defense of wrongdoing state officials (Executive Law §63).

Such abdication is highlighted by the AG's reliance on litigation misconduct (fraud, misrepresentation) to defend state officials and by its abandonment of its duty to address the constitutionality of statutes which are impugned (Executive Law §71; CPLR §1012(b))

[See, Sassower v. Mangano, Ct of Appeals, Doc. 6, pp. 4-6; S.Ct., Cert. Petition, pp. 12-13]; Ethics Folder: 10/14/95 complaint; Sassower v. Commission, Docs. 5, 6]

2. Reinforce investigative mandate of NYS Board of Elections.

** At present, it disregards its investigative duties under Election Law §3-102, §3-104 and, by litigation misconduct, blocks judicial review of its administrative inaction.

By so doing, it knowingly and deliberately protects from investigation and prosecution powerful and politically-connected candidates and their sponsors.

[See, Castracan, "C-11", pp. 23-28, "D-8", pp. 12-13; Ethics Folder, 4/8/94 ltr].

3. Reinforce investigative mandate of NYS Commission on Judicial Conduct.

** At present, it disregards its investigative mandate under Judiciary Law §44.1 and NYS Constitution Article VI, §22 and has substituted a wholly discretionary self-promulgated rule §7000.3, which, on its face, cannot be reconciled with the statute.

By such rule, it has been enabled to dismiss facially meritorious complaints against powerful, politically-connected judges.

[See, Sassower v. Commission, Doc. 1, pp. 4-10; Doc. 5, pp. 10-13; Doc. 6, pp. 10-20]

4. Reinforce compliance by NYS Ethics Commission with Executive Law §94(12)(a) and amend Executive Law §94(17).

** At present, its Executive Director dismisses documented ethics complaints--refusing to provide any evidence authorizing such delegation of power by the Ethics Commission and refusing to address any of the evidence presented by the documented complaints.

By such conduct, the Ethics Commission has knowingly and deliberately aided and abetted the protectionism and official misconduct complained of.

[See, Ethics Folder: our 5/17/94 ltr to Jerry Koenig, Election Law Committee, and enclosures]

D. Amend Judiciary Law §66 relating to the "confidentiality" of the judicial appointments process to the Court of Appeals.

** Such "confidentiality" puts the qualifications of the judicial candidates and nominees to the Court of Appeals beyond public scrutiny and prevents verification--either on an absolute or relative basis--that they meet the constitutional qualification of "well qualified";

** Unconstitutionality of "confidentiality" statute: Was the public informed before it voted on the 1977 Amendment?

[See, our 12/15/93 Testimony before the Senate Judiciary Committee, pp. 3-4, 6-8]

E. Explicitly Prohibit Judicial Cross-Endorsement.

[See Castracan, Doc. "B-2", pp. 10-19, Doc. "D-8", pp. 16-26]

II. EVIDENTIARY SUPPORT FOR THE AFORESAID CJA RECOMMENDATIONS:

A. Election Law cases:
Castracan v. Colavita
Sady v. Murphy

B. Article 78 proceedings:
Sassower v. Mangano, et al.
Sassower v. Commission on Judicial Conduct

C. Attorney disciplinary proceedings:
Grievance Committee v. Sassower

D. Our ethics complaints against the NYS Board of Elections, NYS Commission on Judicial Conduct, and NYS Attorney General, filed with the NYS Ethics Commission

E. Our testimony before the NYS Senate Judiciary Committee on 9/7/93 and 12/15/93 in opposition to the confirmation of Howard Levine and Carmen Ciparick, respectively, to the NYS Court of Appeals

III. THE CORRUPTION OF JUDICIAL ELECTIONS AND OF ALL SAFEGUARDS PROTECTING THE PUBLIC:

A. Corruption of Judicial Elections:

1. A written political deal between the two major parties, trading seven judgeships over a three-year period, with terms and conditions, including a contracted-for judicial resignation to create a further judicial vacancy and a pledge to split patronage [See Castracan, Doc. "B-1", pp. 52-4]

   Such deal is violative of Article VI, §6(c) of New York Constitution, Election Law §17-158(1), (3), Rules of Chief Administrator: Sec. 100.1, 100.2, 100.3(b)(4) [See Castracan, Doc. "B-2", pp. 10-19, Doc. "D-8", pp. 16-26]. Candid comments by judges themselves about the illegal and unethical nature of the deal are recited in DLS' October 24, 1991 ltr to Governor Cuomo, Castracan Doc. "A-1", pp. 4-5]

2. Illegal judicial nominating conventions, observed by eye-witnesses [See Castracan "B-1", pp. 32-51, 55-76]

   Violative of Election Law §6-124, 6-126.

B. The Corruption of Safeguards:

1. Complete refusal to address evidentiary proof by agencies charged with enforcement of the Constitution and law:

   a. **NYS Board of Elections.** Although responsible for implementing the Election Law--and given broad investigative and enforcement powers to do so (§3-102, §3-104)--the State Board refused to investigate the illegal judicial nominating conventions and the written judge-trading deal, failed to invalidate a facially-invalid certificate of judicial nomination, and viciously blocked judicial review of its administrative inaction [See Castracan, "C-11", pp. 23-28, "D-8", pp. 12-13; Ethics Folder: 4/8/94 ltr];

b. NYS Commission on Judicial Conduct. Although responsible under the Constitution (Article VI, §22) and Judiciary Law (Article 2-A) for ensuring the fitness of judges and judicial candidates--and given broad powers to investigate facially-meritorious complaints (§42, §44), it dismissed, without investigation, our facially-meritorious, documented complaints of the written judge-trading deal, illegal judicial nominating conventions, and the courts' politically-motivated, retaliatory decision-making, including the unlawful suspension of the lawyer who, pro bono, had handled the Castracan case, Doris L. Sasower. It has also refused to provide confirmatory information that the Commissioners themselves reviewed such documented complaints [Sassower v. Commission, Doc. 1; Ethics Folder: 10/14/95 complaint, Ex. "A"].

c. NYS Ethics Commission. Although responsible under Executive Law §94 for overseeing the overseers--and given investigative powers--its Executive Director dismissed our fully documented complaint against the NYS Board of Elections--refusing to address any of the evidentiary issues. According to the Ethics Commission's Communications Director, the dismissal was not a Commission determination, but was made by the Executive Director under a resolution delegating dismissal power to the Executive Director--which resolution is confidential [See, Ethics Folder, inter alia, our 4/8/94 ltr, 5/17/94 ltr to Jerry Koenig, Election Law Committee].

Also dismissed by the Ethics Commission's Executive Director, without addressing the evidentiary issues, are our fully documented ethics complaints against the NYS Commission on Judicial Conduct and against the NYS Attorney General [See, Ethics Folder: our 9/14/95 complaint].

d. NYS Attorney General. Although supposedly "the People's attorney", the AG has refused to verify the facts relating to the unlawful and retaliatory suspension of Doris Sassower's license--and blocked judicial verification of such facts by deliberate litigation misconduct. This litigation

misconduct included opposing--without any legal authority--the recusal of the judges who were the subject of the Article 78 proceeding Sassower v. Mangano, et al. from adjudicating it and submitting to them a false and perjurious dismissal motion--which they granted. The AG then argued against review by the Court of Appeals and the U.S. Supreme Court of his judicial clients' self-interested decision in their own favor and their knowing and deliberate perversion of the historic Article 78 remedy.

Although it is the AG's duty to opine as to the constitutionality of statutes whose constitutionality is impugned, the AG refused to address the unconstitutionality of the Article 78 statute and New York's attorney disciplinary law (Judiciary Law §90), which were expressly argued in Sassower v. Mangano, et al.[1].

Litigation misconduct has also been the modus operandi of the AG in the Article 78 proceeding Sassower v. Commission on Judicial Conduct of the State of New York. Turning his back on his duty to intervene on behalf of the public, the AG has, without the slightest legal or factual support, pretended that the facially irreconcilable self-promulgated rule of the Commission (§7000.3) is harmonious with the Constitution and statute and that the facially-meritorious, documented judicial misconduct complaints filed with the Commission do not set forth any judicial misconduct.

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[1] The AG's cover-up and protectionism of the unlawful, retaliatory conduct of his judicial clients in the Article 78 proceeding Sassower v. Mangano, et al. and his acquiescence in a patently unconstitutional disciplinary scheme is now the subject of a §1983 action, also entitled Sassower v. Mangano, et al., 94 Civ. 4514 (SDNY)--which additionally, names the AG as a defendant. The same pattern of brazen litigation misconduct is being repeated by the AG, who--in addition to himself--is representing all the defendants.

2. Dereliction of the branches of government in protecting the public:

a. Judiciary:

As demonstrated, inter alia, by Castracan v. Colavita, Sady v. Murphy, Sassower v. Mangano, et al., Sassower v. Commission on Judicial Conduct, Grievance Committee v. Sassower, the state courts have followed a pattern and practice of abandoning elementary adjudicatory standards, falsifying the factual record, and jettisoning the public interest so as to protect the political and judicial interests challenged.

This includes the NYS Court of Appeals.

b. Executive:

1. Governor: Governor Cuomo's office referred our 1989 complaint of election fraud to the NYS Board of Elections--which dismissed it without investigation; His office denied our 1991 requests for a special prosecutor, telling us to go to the district attorneys.

[See, Castracan, File "A"; and Governor's correspondence file]

2. District Attorney's Office: our complaints to the Brooklyn and Manhattan D.A.'s office have, respectively, been dismissed without investigation and ignored.

[See, D.A. correspondence file]

3. NYS Attorney General's Office: in Castracan, the AG deferred to NYS Board of Elections. Thereafter, it refused to investigate our allegations of judicial corruption and retaliation against DLS and of cover-up and protectionism by the NYS Commission on Judicial Conduct. Moreover, through litigation misconduct, it has successfully blocked judicial review.

[Castracan, Doc. "F-1", pp. 3-4; Sassower v. Mangano, Doc. 3, pp. 12-15, Doc. 4, pp. 23-24, Doc. 6, pp. 1-13; Sassower v. Commission, Docs. 5, 6]

c. Legislative:

1. NYS Assembly Judiciary Committee:

on-going transmittal of correspondence and court papers since 1990; in-person meeting in Albany on 3/1/93

2. NYS Election Law Committee:

No follow-up to testimony at 10/20/92 hearing, supported by Castracan file--which was transmitted to it on that date--or to subsequent correspondence.

3. NYS Senate Judiciary Committee:

Refused to review Castracan file, presented in conjunction with our testimony on 9/7/93 in opposition to confirmation of Justice Levine to NYS Court of Appeals or to follow-up on inaction of NYS Commission on Judicial Conduct, evidence of which was presented to it on 12/15/93 in our opposition to confirmation of Justice Ciparick.

TRANSMISSION VERIFICATION REPORT

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